FORM NO. J (2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
<u>Appellate Side</u>

Present:
THE HON'BLE JUSTICE REETOBROTO KUMAR MITRA

WPA 10425 OF 2023

STATE BANK OF INDIA & ANR.
Vs.
RAJNISH INFRASTRUCTURE PRIVTE LIMITED & ORS.

FOR THE PETITIONER/BANK:	**MR. DEBJYOTI DATTA, SR. ADVOCATE** **MS. MEKHALA KANJI, ADVOCATE** **MR. SHAMIT SANYAL, ADVOCATE**
FOR THE RESPONDENT No. 1:	**MR. KRISHNARAJ THAKER, SR. ADVOCATE** **MR. SOURITRA GANGULY, ADVOCATE** **MR. TANAY AGARWAL, ADVOCATE** **MR. DEEPAK KRIPALANI, ADVOCATE**
HEARD ON :	February 17, 2026.
JUDGMENT ON :	February 17, 2026.

<u>THE COURT:</u>

1. This writ-petition has been filed by the State Bank of India seeking to set aside the order passed by the Debts Recovery Appellate Tribunal on August 31, 2022.
2. The principal grievance of the Bank is that the order passed by the Appellate Tribunal directing refund of a sum of Rs. 1.95 Crore to the respondent no. 1, is illegal and should be set aside.

3. The brief facts leading to this writ petition are enumerated hereinafter.
4. The petitioner, pursuant to proceedings initiated by it against the borrower and guarantor for default of a loan, had put the mortgaged properties of such borrower for sale. The sale notice dated December 16, 2014, specifically mentioned that the property included therein for the purpose of sale would be held on "as is where is basis". It also specified that all intending purchasers would be entitled to inspect the property and the documents of title pertaining to such property.
5. The respondent no. 1 participated in the auction process and was adjudged the highest bidder at Rs. 7.81 Crores. In terms of the notice, the respondent no. 1 had deposited a sum of Rs. 1.95 Crores, aggregating to 25 per cent of the bid amount, on January 21, 2015. The last date to pay the balance sale value was February 4, 2015.
6. On February 4, 2015, the respondent no. 1 sought certain clarifications, including inspection all the title deeds of the entire property as advised.
7. Since, the bank did not reply to the notice of February 4, 2015 the respondent no. 1 sent similar notices on March 17, 2015 and March 23, 2015.
8. The bank replied to such notices on March 26, 2015, stating that, in terms of the request of the respondent no. 1, relevant documents had already been given for inspection. In fact, in this letter, the bank had extended the time to make payment of the balance consideration by the respondent no. 1.
9. It is not clear when such documents were handed over.

10. Evidently, after inspection of the documents, the respondent no. 1 found multiple discrepancies, which were noted and intimated to the bank, seeking further clarification, on April 21, 2015. From the said letter of April 21, 2015, it appears that even though 17 title deeds had been given for inspection, the land purported to be sold measuring approximately 270.46 satak (approximately 1,17,814 square feet), with building and structure, being the subject matter of 17 registered deeds was actually of a much lesser area of 242 sataks. In fact, the bank had failed to mention in the notice that there was a pending land acquisition case and that the chain of title in respect of fragmented land areas was not available.

11. There was no reply or clarification given by the bank to the concerns of the respondent no. 1 as specified in the letter of April 21, 2015.

12. Since the respondent no. 1 had not paid the balance 75 per cent of the sale consideration, the bank had approached the Debts Recovery Tribunal and obtained an order, whereby the bank was permitted to put the property for resale. The property was thus sold, this time for a higher price of Rs. 7.82 Crores.

13. In the meanwhile, on August 18, 2015, the Bank informed the respondent no. 1 that its earnest money deposit constituting 25 per cent of the sale price quoted by the respondent no. 1 was being forfeited.

14. The respondent no. 1 had thereafter approached the Debts Recovery Tribunal seeking refund of the security deposit by way of an IA No. 1000 of 2015 in the SARFAESI application filed by the borrower. This application was however rejected and

was carried in appeal by the respondent no. 1 before the Debts Recovery Appellate Tribunal.

15. It was on August 31, 2022 that the Debts Recovery Appellate Tribunal allowed the appeal of the respondent no. 1 and directed the petitioner herein to refund a sum of Rs. 1.95 Crores to the respondent no. 1 along with interest at fixed deposit rates.

16. It is this order of the Debts Recovery Appellate Tribunal which has been challenged in the present proceeding by the State Bank of India.

17. Mr. Debajyoti Datta, learned senior advocate appearing for the petitioner has principally argued that the bank was well within its right to forfeit the earnest money deposit made by the respondent no. 1, as the said respondent was unable to pay the balance amount within the stipulated time on account whereof the earnest money deposit was forfeited in terms of Rule 9(5) of the Security Interest (Enforcement) Rules, 2002 (hereinafter the Rules) read with the forfeiture clause as contained in the sale notice. Hence, the order of the Debts Recovery Appellate Tribunal is perverse and legally untenable.

18. On a query from the Court, Mr. Datta has also argued that in an application under Article 226 of the Constitution of India a writ Court is empowered to go into the correctness of the order passed by a Tribunal in terms of the judgment by the Hon'ble Supreme Court of India in *Surya Dev Rai v. Ram Chander Rai & Ors*., reported in ***(2003) 6 SCC 675***. Of the four parameters set forth in the said decision, he has fairly submitted it is only on account of the fourth parameter that he challenges the decision

of the Debts Recovery Appellate Tribunal at present. The said parameter is set out hereunder:-

> *"(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."*

19. He has further argued that there is an error in the decision or determination made by the Debts Recovery Appellate Tribunal in relying on the decision of *Alisha Khan v. Indian Bank in Civil Appeal No. 15959-15960 of 2021* decided on December 13, 2021. The order passed by the said tribunal is a clear case of error apparent based on ignorance or disregard of the provisions of law. Thus, it is an error which can be corrected by issuing a writ of certiorari.

20. He has also argued that the bank had specifically mentioned in the sale notice that all intending participants to the e-auction were duty-bound to conduct necessary search and make diligent check-up before participating in the sale process. If a party has done so without being diligent enough, the bank cannot be blamed, particularly, since this is a case where sale was held on "as is where is" and "as is what is" basis.

21. Thus, the order of the Appellate Tribunal is erroneous in directing the Bank to refund the earnest money deposit of respondent no. 1, which it had already forfeited.

22. Mr. Krishnaraj Thaker, learned senior advocate appearing for the respondent no. 1 has made the following submissions while defending the order of the Debts Recovery Appellate Tribunal.

23. He has argued that in terms of Rule 8(6) and Rule 8(7) of the said Rules the authorized officer who is entrusted with the responsibility of causing the public notice is duty-bound to give a proper description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor.

24. Thus, in view of this mandate as contained in the Rules, the notice issued by the petitioner is patently illegal. He has drawn the attention of this Court to the letter of the respondent no. 1 dated April 21, 2015 where the following issues were raised:-

i) *Pendency of a land acquisition case in which a portion measuring a substantial part of the land had been acquired by the land acquisition collector.*

ii) *Fragmented areas of the subject land, aggregating to about 22 satak were not even in the possession of the bank though, the E-Auction notice categorically stated that the bank was in physical possession of the entire 27.43 satak of land.*

iii) *The representation of the bank that 27 satak was being sold was incorrect as it was only 100.47 katha which measures approximately 242 satak was being sold.*

iv) *In respect of 25 satak the chain of title in LR Dag no. 193 could not be traced.*

v) *Similarly, in LR Dag no. 190 the chain of title could not be traced.*

vi) *In respect of Dag No. 302 and 303, there appears to be a water body, although the same has been described as "Sali".*

vii) *The title in respect of Dag no. 302 and 303 could not be traced as no such records were produced by the authorities.*

25. These were the principal points. Additional grounds were also raised, on account of which respondent no. 1 sought refund of the earnest money deposited by it.

26. There is no response to this letter from the bank nor has the bank made any assertion in respect of the allegations leveled in this letter, while dealing with the petition of the respondent no. 1 before the Debts Recovery Appellate Tribunal. The affidavit of the bank, while dealing with the petition, has denied the allegations in such letter in a bald manner, without controverting the allegations or producing any hard evidence that these allegations are incorrect.

27. He has also relied upon a decision of the Supreme Court of India reported in ***AIR 2023 SC 474*** that the bank has a right to forfeit the earnest money, if the successful tenderer is unable to make the payment within the time stipulated in the statute read with the Rules.

28. Mr. Thaker has argued that the description of the land given in the sale notice does not match the title deeds which were produced by the bank for inspection by the respondent no. 1.

29. He has relied on two decisions of the Hon'ble Supreme Court of India, one reported in ***(2015) 5 SCC 423***, which has considerably watered down the principle laid down in Surya Dev Rai (supra) and the other one reported in ***(2008) 9 SCC 1***.

30. I have heard learned counsel for the parties, considered the decisions relied upon by them, and gone through the record.

31. The order assailed before this Court, passed by the Debts Recovery Appellate Tribunal on August 31, 2022, has considered in very great detail the sequence of facts and the law espoused in the case as presented before it.

32. While discharging duties as a constitutional court under Article 226 of the Constitution of India, this Court does not act as a court of appeal, exercising appellate jurisdiction insofar as tribunals

are concerned. The jurisdiction exercised by the Court under Article 226 is very limited insofar as orders of tribunals or civil courts are concerned.

33. In fact, as settled by the Hon'ble Supreme Court of India in *Radhey Shyam & Another v. Chhabi Nath & Others,* reported in ***(2015) 5 SCC 423***, a writ court exercising jurisdiction under Article 226 is not empowered to issue a writ of certiorari if the order impugned is that of a civil court. This remedy is available only in the event the order impugned is passed by a tribunal or some quasi-judicial authority.

34. The more appropriate remedy in such cases would be under Article 227 of the Constitution of India. A Constitutional Court would interfere if the order impugned passed by a tribunal suffers from a manifest error on the face of the proceeding, especially when such decision or determination is based on ignorance or disregard of the provisions of law.

35. It was important to set forth this proposition at the initial stage of this order, as the entire basis of questioning the decision of the Appellate Tribunal is that there has been a manifest error in disregarding the law by the Appellate Tribunal.

36. The Appellate Tribunal has considered every aspect of the matter, including the fact that there were discrepancies between the sale notice and the actual condition of the mortgaged property put up for sale by the bank.

37. The sale notice is clearly discrepant. The discrepancies are:-

i) The encumbrances, which were known to the bank and ought to have been disclosed in such sale notice, at least the pending land acquisition case and the land already acquired by the authorities, ought to have been disclosed, as statutorily mandated under Rule 8(7)(a) of the said Rules.

ii) After inspection of the documents and title deeds which were given by the bank to the respondent no. 1, the respondent no. 1 raised several issues in its letter of April 21, 2015, which the bank received but refused to address.

iii) The bank once again failed to address the issues raised in the letter while dealing with the petition of the respondent no. 1 before the Appellate Tribunal.

iv) The bank had made a misrepresentation in the notice under challenge. It specified that the bank was in actual physical possession of the mortgaged property which had been put up for sale. This could not have been true as a portion of the mortgaged property had already been acquired by the concerned authority pursuant to a land acquisition case.

38. To tide over these issues, the bank again claims that a mere caveat of "as is where is basis" would exempt the bank from all formalities of conducting a proper sale.

39. Thus, the notice inviting sale issued by the bank is faulty to the extent that it makes a misrepresentation while inviting offers from interested purchasers. It would stand to reason that a person relying on such notice and after conducting the due diligence and having paid 25 per cent of the aggregate sale value, would not wish to proceed any further upon learning that the bank had misrepresented the facts.

40. All these afore-stated facts were duly considered by the Appellate Tribunal whereupon the said Tribunal proceeded to pass the order assailed before this Court.

41. The sore point repeated by Mr. Datta is that the judgment of Alisha Khan (supra) was on a separate set of facts, which related to the COVID-19 period and was in no way concerned with the facts pertaining to the present case, cannot be construed as a manifest error on the face of the record. The Tribunal has considered the decision as also several other decisions and has

construed the ratio of the said decision in a manner thought fit by it. The consideration is not outrageous, nor can it be termed manifestly erroneous, which warrants intervention by this Court.

42. The obligation of the parties in a contract is that both parties should make a true and correct representation of the product, which is the subject matter of the contract. The parties also agree to perform their respective obligations in terms with the representations made by them. Hence, it is a question of performance of a contract.

43. In the present case, the bank was obliged to make a true and correct representation of the product it was seeking to sell. The product being the mortgaged land. The land, which was the subject matter of the sale notice, ought to be sold in its entirety as represented.

44. The Respondent No. 1, as the auction purchaser, was obliged to make the payment in terms with the payment schedule set forth by the bank, as well as entailed in the Act and the Rules. The bank has made an infraction of its obligation by making an incorrect representation of the product which it was selling. The incorrect representation being two fold:

a) The first, that the area of the land, represented as approximately 270 sataks, was actually 242 sataks, as this differential quantum of land had been acquired under the land acquisition case, which was not represented by the bank in the notice or even thereafter.

b) The second misrepresentation made by the bank stems from the fact that the bank made an assertion in the sale notice that it was in actual physical possession of the entire land, meaning thereby 270 sataks. This is absolutely false. 270 sataks were not available for the bank to take actual physical possession. The contract thus *took off on a wrong footing, and not just on error of fact, but also on misrepresentation of facts.*

45. Respondent No. 1 may or may not have caused any infraction by failing to deposit the balance sum (75%) within February 4, 2015, being the 15^{th} day from the confirmation of the sale. However, repeated requests by Respondent No. 1 to the bank were ultimately met by the bank on March 26, 2015, stating in no uncertain terms that it had given some documents and that the balance payment should be made immediately. This is nothing short of acquiescence from the bank. Acquiescence, again, on two counts:

   a) *that the documents had been given pursuant to the requests made on or after February 4, 2015; and*
   b) *that the bank was agreeable to take the balance sum post February 4, 2015.*

46. The points, so vociferously raised by Mr. Datta, are well met by the bank itself. The request by the respondent No. 1 post February 4, 2015, to accept the balance sum and the acquiescence and/or acceptance thereof by the bank on March 26, 2015, qualify as an agreement in writing, by which the bank agreed to accept the balance sum beyond February 4, 2015.

47. The concept of forfeiture involves the loss of earnest money or deposit. However, this loss of earnest money or deposit by the errant party to a contract has to be preceded by a default. Unless the errant party has caused a default in performing its contractual obligation, the question of forfeiture should not normally arise.

48. In the present case, it is the bank which is the errant party and not the respondent no. 1. It is the bank which has caused the default. The notice of April 21, 2015 given by the respondent no. 1 seeking further particulars of the property to be sold, in view of the deficiencies found by the respondent no. 1, was never addressed by the bank. It would not be incorrect to state that said letter was unceremoniously ignored by the bank.

49. In the present case, clearly, the bank has committed a default inasmuch as it failed to satisfy the prerequisites under Rule 8(5) of the said Rules. There was a clear discrepancy between the description of the property in the notice for sale and the actual property that was being sold. Further, the notice specified that the bank was in actual physical possession of the property, which was clearly incorrect, as the extent of the property described in the notice and the extent of the property being sold were at variance with each other. Thus, it cannot be said that the respondent no. 2 was a defaulting party and hence liable to suffer the measure of forfeiture of the earnest money. All such issues were duly considered by the Appellate Tribunal, and there is no error in the decision of the Appellate Tribunal. The mere interpretation of a judgment cited and reliance thereon by the said Tribunal cannot in any manner be termed as a manifest error, nor can the said Tribunal be construed as having 1 acted on the basis of ignorance or disregard of the law in the circumstances aforestated.

50. The acts of commission and/or omission of the bank in conducting the sale cannot be construed as being clean and above board. In view of the aforesaid, I do not find that the

decision of the Appellate Tribunal is manifestly erroneous or requires any intervention.

51. The order assailed before this Hon'ble Court, passed by the Debts Recovery Appellate Tribunal, has considered each and every fact and proposition of law and merely because a judgment has been construed in a particular manner, or that an issue raised, has not been adverted to in the manner meeting the satisfaction of the bank, it cannot be said that the order passed by the Appellate Authority is manifestly erroneous or patently wrong both on facts and on consideration of law.

52. In view of the afore-stated, I do not find any reason to interfere with the order of the learned Appellate Tribunal.

53. This writ-petition fails and **WPA 10425 of 2025** is accordingly **dismissed**. No order as to costs.

54. Since a period of more than three years has lapsed and the bank has enjoyed the usufruct of the money which it has illegally retained, I direct the bank to make the payment by 26.02.2026. The refund will be made with the same rate of interest as specified by the Appellate Tribunal.

55. Mr. Datta, learned Sr. Advocate appearing for the petitioner-bank, prays for stay of the order, which is considered and declined.

(REETOBROTO KUMAR MITRA, J.)